

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARIO TORRES,  
Plaintiff,  
v.  
NATALIE SABA, et al.,  
Defendants.

Case No. [17-cv-06587-SI](#)

**ORDER**

Re: Dkt. Nos. 21, 22, 23, 26

A. Scheduling On Dispositive Motions

In the April 2, 2018 order of service, the court ordered service of process on eight defendants and directed defendants to file a motion for summary judgment or other dispositive motion no later than June 29, 2018. Docket No. 7 at 12. The court further directed plaintiff to file and serve his opposition no later than July 27, 2018, and directed defendants to file and serve their reply no later than August 10, 2018. *Id.* at 12-13.

Defendants have appeared in this action and are represented by two different attorneys: the four court reporters (“court reporter defendants”) are represented by a private attorney, and the municipal entities and the two public defenders (“public defender defendants”) are represented by Contra Costa County Counsel. On April 27, 2018, the court reporter defendants filed a motion to dismiss and the public defender defendants filed a motion to dismiss.

The court declines to change the previously-set deadline for plaintiff to oppose these dispositive motions: Plaintiff’s oppositions to both motions to dismiss must be filed and served no later **July 27, 2018**. If plaintiff wants to file his oppositions to the motions earlier, he may do so in order to move the case forward. If plaintiff files his oppositions earlier than July 27, 2018, defendants’ reply briefs must be filed and served no later than **fourteen days** after they receive

1 plaintiff's oppositions; otherwise, the reply deadline of August 10, 2018 remains in place.  
2 Plaintiff is cautioned that the court will not be inclined to grant any extension of plaintiff's  
3 deadline because the current briefing schedule gives him three months to prepare his opposition.

4 The court will set a briefing schedule for motions for summary judgment at a later date if  
5 this case proceeds past the motion to dismiss stage.

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7 B. Miscellaneous Motions And Requests From Plaintiff

8 Plaintiff has filed a "motion to bypass claim process." The document is rather confusing  
9 as it appears to argue that he should be excused from failing to comply with a claims-presentation  
10 requirement but does not identify the claims in this action for which he failed to timely present a  
11 claim. The exhibits attached to the one-page motion do not eliminate the confusion. The exhibits  
12 include an "application to file late claim" that was denied, but the only injury mentioned on the  
13 application is plaintiff's arrest and incarceration on July 4, 2012. Docket No. 21 at 5. His arrest-  
14 related claims are being litigated in his other case (Case No. 16-cv-6607) and not in the present  
15 case. Another exhibit is an application for public health insurance, which has nothing to do with  
16 the present case. Another group of exhibits pertain to the calculation of plaintiff's time credits.  
17 Plaintiff's time credit issues do not appear to be relevant to the present action asserting claims  
18 against court reporters and public defenders for events that occurred in the criminal cases against  
19 him several years ago. If plaintiff believes that the state court or prison officials have  
20 miscalculated his time credits in violation of his constitutional rights, he may file a petition for  
21 writ of habeas corpus in the federal court. However, before a federal court will entertain such a  
22 petition, the petitioner must first exhaust state court remedies for each of his claims by presenting  
23 the claims to California's highest court to give that court a fair opportunity to rule on the merits of  
24 each of the claims. This civil rights action is not the appropriate place to assert claims regarding  
25 the calculation of time credits. Finally, if plaintiff wants to complain about conditions of  
26 confinement at his prison, he may file a new civil rights action. This action is limited to *only* those  
27 claims discussed in the order of service. For these reasons, the "motion to bypass claim process"  
28 is DENIED. Docket No. 21.

1 Plaintiff has filed a motion for extension of time, request for counsel and stay of  
2 proceedings. Docket No. 22. The exhibits attached to the motion are most of the same exhibits  
3 attached to the motion to bypass claim process discussed in the preceding paragraph. The exhibits  
4 do not support the request for an extension of an unidentified deadline, a stay, or appointment of  
5 counsel. As explained in the preceding paragraph, the exhibits appear to be irrelevant to this case.  
6 This case has been pending for more than a year and a half (as this 2017 case consists of claims  
7 severed from a case first filed on November 15, 2016), with little apparent progress toward  
8 resolution. The court does not want to unnecessarily stay this action and further delay its  
9 resolution. Plaintiff has until late July 2018 to file his oppositions to defendants' motions to  
10 dismiss that were filed in late April. He has plenty of time to prepare his opposition briefs if he  
11 acts diligently. The request for a stay and extension of an unidentified deadline are DENIED.  
12 Docket No. 22.

13 Plaintiff has moved for the appointment of counsel to represent him in this action. A  
14 district court has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an  
15 indigent civil litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328,  
16 1331 (9th Cir. 1986). This requires an evaluation of both the likelihood of success on the merits  
17 and the ability of the plaintiff to articulate his claims *pro se* in light of the complexity of the legal  
18 issues involved. *See id.* Neither of these factors is dispositive and both must be viewed together  
19 before deciding on a request for counsel under § 1915(e)(1). Here, exceptional circumstances  
20 requiring the appointment of counsel are not evident. On the allegations of the complaint, the  
21 likelihood of success on the merits looks rather low and plaintiff has not shown a difficulty  
22 articulating his claims. The motion for appointment of counsel is DENIED. Docket No. 22.

23 Plaintiff has filed a motion for discovery and a request for defendants to provide records to  
24 him. Plaintiff's motion and request are DENIED. Docket Nos. 23, 25. It is the responsibility of  
25 the parties to conduct their own discovery. If plaintiff wants to attempt to obtain discovery, he  
26 must comply with the discovery rules in Federal Rules of Civil Procedure 26-37. The court  
27 generally is not involved in the discovery process and only becomes involved when there is a  
28 dispute between the parties about discovery responses. Discovery requests and responses

1 normally are exchanged between the parties without any copy sent to the court. *See* Fed. R. Civ.  
2 P. 5(d) (listing discovery requests and responses that “must not be filed” with the court until they  
3 are used in the proceeding or the court orders otherwise). Only when the parties have a discovery  
4 dispute that they cannot resolve among themselves should the parties even consider asking the  
5 court to intervene in the discovery process. The court does not have enough time or resources to  
6 oversee all discovery, and therefore requires that the parties present to it only their very specific  
7 disagreements. To promote the goal of addressing only very specific disagreements (rather than  
8 becoming an overseer of all discovery), the court requires that the parties meet and confer to try to  
9 resolve their disagreements before seeking court intervention. *See* Fed. R. Civ. P. 37(a); N. D.  
10 Cal. Local Rule 37. Where, as here, one of the parties is a prisoner, the court does not require in-  
11 person meetings and instead allows the prisoner and defense counsel to meet and confer by  
12 telephone or exchange of letters. Although the format of the meet-and-confer process changes, the  
13 substance of the rule remains the same: the parties must engage in a good faith effort to meet and  
14 confer before seeking court intervention in any discovery dispute. Plaintiff’s discovery requests  
15 should not be filed with the court, and instead must be served on defendants by sending them to  
16 defense counsel.

17       Plaintiff has sent a letter to the court asking about the scheduling of a hearing. Docket No.  
18 26. The court generally does not hold hearings in cases in which one of the litigants is  
19 incarcerated, such as plaintiff is. In these cases, the court reads the parties’ written submissions --  
20 usually the motion, opposition, and reply -- and decides the motion based on those written  
21 submissions. This is why it is extremely important for a litigant to be careful to present his case in  
22 a clear and coherent manner in his written submission, rather than to rush through his written  
23 submission and expect to explain things more clearly at an oral argument. On rare occasions, the  
24 court may decide that a motion or matter needs a hearing in a case in which a litigant is in custody.  
25 When that occurs, the court will issue an order setting the matter for a hearing and explaining why  
26 a hearing is necessary. Of course, if a trial becomes necessary, the incarcerated litigant can be  
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brought to the courthouse.

**IT IS SO ORDERED.**

Dated: June 6, 2018



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SUSAN ILLSTON  
United States District Judge